No. 98-454

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In The

# Supreme Court of the United States

October Term, 1998

CITY OF CINCINNATI; ROXANNE QUALLS, Councilmember and Mayor of the City of Cincinnati; DWIGHT TILLERY, Councilmember; TYRONE YATES, Councilmember; TODD PORTUNE, Councilmember; BOBBIE STERNE, Councilmember; PHILIP M. HEIMLICH, Councilmember; MINETTE J. COOPER, Councilmember; THOMAS A. LUKEN, Councilmember; NICHOLAS J. VEHR, Councilmember; CHARLES WINBURN, Councilmember; JOHN F. SHIREY, City Manager of the City of Cincinnati,

*Petitioners,*

v.

JOHN R. KRUSE; KRUSE FOR COUNCIL COMMITTEE; THOMAS E. BRINKMAN, JR.; MARK W. MILLER,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit**

## BRIEF IN SUPPORT OF PETITION FOR CERTIORARI OF THE STATES OF ARIZONA, CONNECTICUT, FLORIDA, HAWAII, IDAHO, INDIANA, IOWA, KANSAS, MASSACHUSETTS, MICHIGAN, MINNESOTA, MISSOURI, MONTANA, NEVADA, NEW HAMPSHIRE, NEW MEXICO, NORTH CAROLINA, NORTH DAKOTA, OHIO, OKLAHOMA, SOUTH DAKOTA, TEXAS, UTAH, VERMONT, WASHINGTON AND WEST VIRGINIA AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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## QUESTIONS PRESENTED

1. Whether, consistent with this Court's ruling in *Buckley v. Valeo*, 424 U.S. 1 (1976), states and municipalities may enact campaign spending limits for their elections upon proof of new facts and circumstances not available nor presented to the *Buckley* Court which establish that compelling governmental interests justify the limits.

2. Whether, if the Court of Appeals for the Sixth Circuit correctly read *Buckley* to hold that all campaign spending limits are *per se* unconstitutional, *Buckley* should now be overruled to permit a showing at trial of new facts and circumstances and new compelling governmental interests which justify such limits.

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## INTERESTS OF THE AMICI

The State of Iowa and twenty-five other *amici* States join this brief in support of the petition for certiorari filed by the City of Cincinnati. At issue is whether *Buckley v. Valeo*, 424 U.S. 1 (1976), bars all campaign spending limitations without regard to need or changed circumstances and, if so, whether *Buckley* should be reconsidered and overruled.

The issue is of great significance. Campaign spending has escalated dramatically in the twenty-two years since *Buckley v. Valeo*. Those years have shown that *Buckley* was wrong in predicting that limitations on campaign contributions would be adequate to prevent corruption and the public perception of corruption. Today fundraising to keep up with the spending race dominates the attention of candidates and officials. Television sound bites have replaced comprehensive discussions of issues, and the public is so disenchanted with the electoral process that the percentage of eligible voters exercising the franchise in this country is among the lowest of any advanced democracy.

Representative government depends on public confidence in the electoral system. Public distrust of government because of escalating campaign spending and reports of campaign finance abuse adversely affects all governmental officials. The quality of representation and public acceptance of government are damaged by the attention officials must give to soliciting ever more contributions.

Thirty-four States had enacted campaign spending limitations prior to *Buckley*. Yadlosky, Congressional Research Service, *Analysis of Federal and State Campaign Finance Law*, 22-35, Chart B (1975). That case has since been the basis for invalidation of many state laws and generated countless suits against state and local governments.

The Sixth Circuit's application of *Buckley* to strike locally enacted campaign spending limits in this case effectively bars adoption of campaign spending limitations at any level of government regardless of the offered justification. This Court should grant certiorari in light of the enormous consequences to our system of representative government stemming from this misapplication of *Buckley*.

## REASONS FOR GRANTING THE WRIT

The court below held that *Buckley v. Valeo* forever barred campaign spending limits, regardless of whether the States are able to show a compelling interest that cannot be achieved through other means. That cannot be the law. Especially in an issue of such importance, constitutional rules cannot be frozen where they are dependent upon assessments of facts that have changed over time.

Under the decision below, no set of facts could be proved to distinguish *Buckley* or hold it inapplicable due to changed circumstances. App. pp. 19-20. Accordingly, to the extent that *Buckley* held spending limits constitutionally unsupportable, "correction through legislative action is practically impossible." *Payne v. Tennessee*, 501

U.S. 808, 827 (1991), citing *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 407 (1932) (Brandeis, J., dissenting).

## I. THE SIXTH CIRCUIT MISCONSTRUED THIS COURT'S DECISION IN *BUCKLEY v. VALEO* AS PRECLUDING JUDICIAL RECOGNITION OF COMPELLING GOVERNMENTAL INTERESTS SUFFICIENT TO JUSTIFY CAMPAIGN EXPENDITURE LIMITATIONS.

*Buckley* assumed that the "major evil associated with rapidly increasing campaign expenditures is the danger of candidate dependence on large contributions." *Buckley v. Valeo*, 424 U.S. at 55. The Court then reasoned that "[t]he interest in alleviating the corrupting influence of large contributions" was served by FECA's contribution restrictions and disclosure requirements. The Court therefore concluded, on the record before it, that limitations on overall expenditures were unnecessary. *Id.* *Buckley* did not decide that the Constitution directly prohibits spending limitations. Instead, based upon the limited record before it, the Court found that spending limitations were not necessary to accomplish the compelling State interest of "alleviating the corrupting influence of large contributors" because alternative measures would suffice. 424 U.S. at 58. *Buckley* did not foreclose proof of new or changed facts and circumstances to support the enactment of campaign spending limitations.

### A. Cincinnati offered proof of facts and circumstances supporting the City Council's legislative determination that campaign expenditure limitations were necessary to serve compelling governmental interests.

The record in this case fully supports the City Council's legislative judgment that excessive campaign spending undermines the public's confidence in the city's electoral process and in its elected officials. *Buckley* recognized that reduction of the appearance of corruption is a compelling state interest in order to protect public confidence in the system – surely a prerequisite to democratic government. The diversion of candidates' and officials' time and attention to fundraising, rather than the issues of governing, undermines public confidence, as does the perception that qualified persons cannot win unless they have access to significant wealth.

#### 1. Campaign expenditures have risen dramatically since issuance of the *Buckley* decision.

Justice White's dissent in *Buckley* predicted that campaign spending would inevitably escalate in the absence of spending limitations. 424 U.S. at 264. Experience has proven Justice White's prediction true. Campaign spending has dramatically escalated since 1976.

The City of Cincinnati's experience shows the escalation of campaign spending at the local level. From 1987 to 1995 total campaign spending for City Council rose from $958,000 to $2.33 million while the number of candidates

declined from 25 to 18. R. No. 38, Statement of Facts, ¶ 1.[1] By 1995, political contributions by average voters had become only a marginal factor in Cincinnati City Council campaign spending. In 1995, contributions of less than $100 constituted only 5.6 percent of total spending. R. No. 38, Exh. 1, ¶ 4; Exh. 3, Makinson Aff., ¶ 10. Only 5,949 persons (one third of one percent of the 1.8 million people in the Cincinnati metropolitan area) donated over $100 in any City Council campaign from 1991 to 1995. R. No. 38, Exh. 1, ¶ 8; Exh. 3, ¶ 14.

Spending also escalated at the federal level. Spending in United States Senate races increased almost nine fold from 1976 to 1996 (from $38 million to $341 million). The average cost of a Senate campaign increased from $610,000 in 1976 to $4.7 million in 1996 – requiring an average Senator or Senate candidate to raise $15,000 in contributions for every week of a six-year term. Total campaign spending for the U.S. House of Representatives climbed from $60.9 million in 1976 to $499 million in 1996. The average winning campaign cost for a congressional seat jumped from $87,280 in 1976 to $673,000 in 1996. Ninety-four House candidates spent more than one million dollars each in 1996; six spent two million dollars or more. Center for Responsive Politics, "The Big Picture: Where the Money Came From in the 1996 Elections" (1997) [www.crp.org]; Wertheimer and Manes, "Campaign Finance Reform: A Key to Restoring the Health of Our Democracy," 94 Colum. L. Rev. 1126, 1132.

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[1] The full record in the District Court will be referred to as "R." Affidavits will be cited as "Aff."

**2. Escalating campaign spending has significantly damaged public confidence in the electoral system.**

Excessive campaign spending undermines public confidence in the electoral process and in elected officials. The Cincinnati League of Women Voters conducted a two-year study of campaign finance reform which concluded:

> Voters often perceive the high level of campaign expenditures as buying an office and of the officeholder's need, therefore to pay special attention to large contributors and their interests.
>
> Citizens are exercising less frequently their right and responsibility to vote because of disenchantment with the way the current system operates.

R. No. 38, Exh. 1. The record also establishes a public perception in Cincinnati that officeholders must pay special attention to large contributors in order to raise adequate funds for the next election. R. No. 38, Exh. 1, ¶ 23, citing League of Women Voters Study attached to Exh. 6; Deardorff Aff., Exh. 4, ¶ 7; Sterne Aff., Exh. 7, ¶ 28.

*Buckley* assumed that "[a] restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached." 424 U.S. at 19. Escalated campaign spending has not, however, resulted in more issues discussed in greater depth. To the contrary, the record below showed that candidates developed large war chests for

the purpose of, and effectively used them to, freeze other candidates out of races by buying up available television advertising time. R. No. 38, Statement of Facts, ¶ 13; R. No. 37, Galvin Aff. *See also* Wertheimer and Manes, 94 Colum. L. Rev. at 1133. Nationally, increased spending has directly resulted in increased reliance on television commercials, rather than on expanding the "marketplace of ideas." *See* Roland S. Homet, Jr., "Fact-Finding in First Amendment Litigation: The Case of Campaign Finance Reform," 21 Okla. City. U. L. Rev. 97, 121 (1996).

Unlimited campaign spending undermines representative government by discouraging qualified persons from running for office. The lack of any limits on campaign spending threatens to turn elective office into a rich person's game. The undisputed Statement of Facts, R. No. 38, Exh. 1, ¶ 13, establishes that the high cost of running for city council discourages qualified persons from running and thus limits the choice of voters. See R. No. 38, Smith Aff., Exh. 11, ¶ 8.

*Buckley* wrongly dismissed the finding of the court of appeals that spending limits were necessary to prevent circumvention of contribution limits as "not persuasive." 424 U.S. at 55. The absence of campaign spending limitations has made it possible for candidates and contributors to develop many means to circumvent contribution limitations. The high cost of winning campaigns places enormous pressure on candidates to raise funds. "This means, in turn, that those who seek influence through this system of unlimited spending will often contribute money in ways which undercut the anticorruption purpose of the contribution limitations." Raskin & Bonifaz, "Equal Protection and the Wealth Primary," 11 Yale L. & Pol'y Rev.

273, 326 (1993). An example is the practice of "bundling" individual contributions so that contributions from related entities are collected by one entity and provided to the campaign, thus evading contribution limitations while increasing the influence of the contributor. *Id.* at 326-327.

After *Buckley*, this Court recognized that States have a compelling interest to prevent the "corrosive and distorting effects" of large aggregations of corporate wealth on elections. In *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), this Court upheld a limitation on independent corporate spending in elections. The Court found that the limitations furthered a compelling interest not in eliminating "financial quid pro quo" corruption, but in reducing "a different type of corruption in the political arena: the corrosive and distorting effects [upon the election process] of immense aggregation of wealth that are accumulated with the help of the corporate form. . . . " *Id.* at 660. *See also FEC v. Nat'l Right to Work Comm.*, 459 U.S. 197, 207-208 (1982) (acknowledging legitimate interest in "ensuring that substantial aggregations of wealth amassed by the special advantage of the corporate form of organization should not be converted into political 'war chests' which could be used to incur political debts from legislators who are aided by the contributions"); *U.S. v. International Union*, 352 U.S. 567, 585 (1957) (interpreting the prohibition upon corporate and labor organization contributions in connection with federal elections in a manner consistent with "the long series of congressional efforts calculated to avoid the deleterious influences on federal elections resulting from the use of

money by those who exercise control over large aggregations of capital").

This Court has also identified preservation of a stable political process as a critical state interest – in that all our democratic institutions are based upon acceptance by the governed. In *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997), this Court upheld a "fusion" ban on candidates appearing on the ballot for more than one party. The Court recognized the State of Minnesota's "strong interest" in the stability of its political system, permitting reasonable election regulation, even to the extent of favoring a two-party system. 520 U.S. at 361.

**3. The fundraising demands resulting from unlimited campaign spending impede the ability of candidates and elected officials to devote sufficient time to discussion of substantive issues and performance of official duties.**

The staggering cost of political campaigns today means that fund-raising commands a significant amount of the time of elected officials and candidates. So long as there is no cap, all candidates have an incentive to spend more than their opponents. The result is that the President, Governors, and elected officials at all levels are diverted from their official duties and focus instead on fund-raising. The nature of incessant fund-raising also raises concern that those who give will command the officials' attention rather than the public at large. Escalating campaign spending and concomitant fundraising thus also affect the quality of representation by officials.

That raising large amounts of campaign funding can adversely affect performance of official duties and public perception thereof is also apparent in the judicial campaign context. Given the increasingly expensive nature of elections, judges must seek substantial campaign contributions, often from litigants and lawyers with business before the judge at issue. Scott D. Weiner, "Popular Justice: State Judicial Elections and Procedural Due Process," 31 Harv. Civ. R.-Civ. L. L. Rev. 187, 196 (1996). Favoritism toward litigants directly contradicts the very function of the judge and the constitutional requirements of due process. *See Ward v. Village of Monroeville, Ohio*, 409 U.S. 57 (1972). Yet the Court of Appeals for the Sixth Circuit has held that *Buckley* precludes limitations on judicial campaign spending as well. *Suster v. Marshall*, 149 F.3d 523 (6th Cir. 1998) (petition for certiorari due October 28).

The impact on official time is most obvious at the federal level.[2] Senators must raise an average of $15,000 per week to remain competitive; representatives need $6500 per week. The incumbent President, Vice-President, and Speaker of the House have all been the target of investigations and threats of investigations for alleged

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[2] The decision below wrongly held that federal experience was irrelevant to the City's argument that there were compelling governmental interests to support its limitations on campaign spending. App. p. 20. It is ironic that the failure of the federal government to adequately defend federal campaign spending limitations in *Buckley* precluded States from putting caps on campaign expenditures but now federal courts say local governments cannot point to the federal experience to defend spending limits.

campaign finance abuses. H.R. Rep. No. 1, 105th Cong., January 17, 1997; S. Rep. No. 167, 105th Cong., 1998.

States have a compelling interest in assuring that the demands of fundraising not drain elected officials of the time and attention necessary to carry out their official duties. Blasi, "Free Speech and the Widening Gyre of Fund-Raising: Why Campaign Spending Limits May Not Violate the First Amendment After All," 94 Colum. L.Rev. 1281, 1284-1289 (1994). The increased time spent raising campaign funds is directly related to the high level of campaign spending. Alternative campaign finance reform methods, such as contribution limits and disclosure requirements, do not prevent this diversion of time and attention. "Candidates facing or fearing tight races will be preoccupied with fund-raising (or voucher raising) under any system that does not restrict total spending." *Id.* at 1284. This harm is clearly not caused by speech, but by the process of collecting campaign dollars. Nor can the impact on candidates' time be mitigated by more speech. *Id.* at 1298-99.

The City of Cincinnati offered evidence to establish that the campaign expenditure limitations were necessary to free candidates and office-holders from the inordinate amount of time and attention which must be devoted to fundraising. The decision below wrongly applied *Buckley* to foreclose judicial recognition of these governmental interests, concluding that government simply "cannot constitutionally limit the cost of campaigns. . . . " App. p. 22.

As the concurring panel member recognized, this aspect of the decision below is in conflict with the rationale of decisions of the Courts of Appeals for the First and Eighth Circuits, upholding voluntary expenditure limits within a public financing system. App. pp. 29-30. Those decisions recognized an independent compelling governmental interest in freeing candidates from the rigors of fundraising. *See Rosenstiel v. Rodriguez*, 101 F.3d 1544, 1553 (8th Cir. 1996), *cert. denied* ___ U.S. ___, 117 S. Ct. 1820 (1997); *Vote Choice Inc. v. DiStefano*, 4 F.3d 26, 39 (1st Cir. 1993). The Court of Appeals for the Eighth Circuit, in upholding the voluntary expenditure limitations in Minnesota's public financing system, found as a matter of "well settled" law the government's compelling interest in seeking "a diminution in the time candidates spend raising campaign contributions, thereby increasing the time available for discussion of the issues and campaigning." *Rosenstiel*, 101 F.3d at 1553, *citing Shrink Mo. Gov't PAC v. Maupin*, 71 F.3d 1422, 1426 (8th Cir. 1995); *Republican Nat'l Committee v. FEC*, 487 F. Supp. 280, 285 (S.D.N.Y) (three-judge court), *aff'd mem.* 445 U.S. 955 (1980); *but see Russell v. Burris*, 146 F.3d 563, 568 (8th Cir. 1998) (indicating that the anti-corruption rationale is only compelling interest thus far recognized by this Court to support campaign spending limits). The Court of Appeals for the First Circuit, in upholding portions of the Rhode Island public financing system, acknowledged that "the state possesses a valid interest in having candidates accept public financing because such programs . . . free candidates from the pressures of fundraising." *Vote Choice Inc. v. DiStefano*, 4 F.3d at 39.

This Court has long recognized a strong public interest in avoiding the distraction of officials from their governmental duties. *Crawford-El v. Britton*, 118 S. Ct. 1584, 1592-93 (1998) (qualified immunity from official capacity suits); *Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982) (public concern with cost of subjecting officials to risk of trial); *Imbler v. Pachtman*, 424 U.S. 409, 416 (1976) (prosecutorial immunity). The immunity cases recognize that it is important not only to prevent the risk of monetary liability but also to protect officials' time and ability to carry out the duties they were elected to perform. *Behrens v. Pelletier*, 516 U.S. 299, 305 (1996) (immunity also protects from pretrial burdens such as discovery).

"It is quite wrong to assume that the net effect of limits on contributions and expenditures – which tend to protect equal access to the political arena, to free candidates and their staffs from the interminable burden of fund-raising, and to diminish the importance of repetitive 30-second commercials – will be adverse to the interest in informed debate protected by the First Amendment." *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, 518 U.S. 604, 116 S. Ct. 2309, 2332 (1996) (Stevens and Ginsberg, J., dissenting).

### B. *Buckley* does not preclude judicial recognition of compelling governmental interests sufficient to justify spending limitations.

Perhaps because this Court in *Buckley* considered only an abstract challenge to campaign spending limitations and the United States did not defend those, the Court found that "no governmental interest that has been

suggested is sufficient to justify the restriction on the quantity of political expression imposed by 608(c)'s campaign expenditure limitations." 424 U.S. at 55. As shown above, there are a variety of interests that are implicated by campaign spending limits and the City should have been permitted to prove these interests at trial.[3]

The Court's factual assumptions in *Buckley* cannot permanently preclude courts from hearing evidence that those facts are in error or from hearing new factual matters to support campaign spending limitations. "[A] decision of the Court, if, in essence, merely the determination of a fact, is not entitled in later controversies between other parties, to that sanction which, under the policy of *stare decisis*, is accorded to the decision of a proposition purely of law. For not only may the decision of the fact have been rendered upon an inadequate presentation of then existing conditions, but the conditions may have

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[3] Kruse attacked the facial constitutionality of Cincinnati Ordinance 240-1995, arguing that no set of facts could be proven to support the ordinance. The district court granted summary judgment, concluding that *Buckley* was controlling in its conclusion that campaign expenditure limits are unconstitutional. App. p. 47. The Court of Appeals, while acknowledging Kruse's agreement to stipulate to any and all facts set forth by the City in defense of the ordinance, affirmed the award of summary judgment, concluding that no new governmental interests beyond those rejected in *Buckley* were offered by the City. App. pp. 3, 28. In a concurring opinion, Judge Cohn disagreed, indicating that issues of new compelling interests had been legitimately raised, but concluding that "although the City here attempted to develop a compelling factual record, it failed to do so." App. p. 29.

changed meanwhile." *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 412 (1931) (Brandeis, J. dissenting).

Where less restrictive alternatives fail to accomplish the compelling state interest, *stare decisis* does not preclude a State from enacting more burdensome laws necessary to meet the need. *See Federal Communications Commission v. League of Women Voters of California*, 468 U.S. 364, 401 n.27 (1984) describing *CSC v. Letter Carriers*, 413 U.S. 548, 557-563 (1973) ("over a century of governmental experience with less restrictive alternatives that proved to be inadequate to maintain the effective operation of government" supported constitutionality of Hatch Act).

Changed factual circumstances provide an appropriate basis for distinguishing a decision of the Supreme Court. *See Patterson v. McLean Credit Union*, 491 U.S. 164, 174 (1989) ("a precedent becomes more vulnerable as it becomes outdated and after being 'tested by experience, has been found to be inconsistent with the sense of justice or with the social welfare' "), *quoting Runyon v. McCrary*, 427 U.S. 160, 191 (1976) (Stevens, concurring). Overruling a prior case is appropriate where "facts have so changed or come to be seen so differently, as to have robbed the old rule of significant application or justification. . . . " *Planned Parenthood v. Casey*, 505 U.S. 833, 854 (1992).

## II. THERE IS SUFFICIENT DOUBT REGARDING THE SOUNDNESS OF *BUCKLEY* TO MERIT RECONSIDERATION OF THAT DECISION.

To the extent that the Sixth Circuit correctly applied *Buckley* to hold all campaign spending limits unconstitutional, reconsideration of *Buckley* is appropriate.

Significant doubt about the soundness of the decision in *Buckley* and the strength of criticism of that decision among legal scholars[4] supports reconsideration. *See Afroyim v. Rusk*, 387 U.S. 253, 255-56 (1967); *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36, 47-49 (1977).

It is particularly inappropriate to read *Buckley* as conclusively adjudicating issues of legislative fact as there was never a trial in *Buckley*. That 144-page *per curiam* decision was an advisory opinion, decided at the invitation of Congress in a manner contrary to basic principles of constitutional adjudication. Homet, 21 Okla.City U. L.Rev. at 99-107. Congress authorized any voter to seek a declaratory judgment to construe the constitutionality of the act.[5] *Buckley v. Valeo*, 519 F.2d 821, 834, n.7 (D.C. Cir. 1975). Indeed, no one could have been injured by the act as the case was filed on January 2, 1975, the first business day after the law took effect. The case was rushed to judgment because Congress so ordered.

The *per curiam* decisions of the court of appeals and this Court were based on stipulations and offers of proof

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[4] Among critical analyses of *Buckley* are: C. Edwin Baker, *"Campaign Expenditures and Free Speech,"* 33 Harv. C.R.-C.L.L.Rev. 1 (1998); Peter M. Shane, *Commentary, Back to the Future of the American State: Overruling Buckley v. Valeo and Other Madisonian Steps*, 57 U. Pitt. L. Rev. 443 (Winter 1996); Roland S. Homet, Jr., "Fact-Finding in First Amendment Litigation: The Case of Campaign Finance Reform," 21 Okla. City. U. L. Rev. 97 (1996).

[5] The *Buckley* decision summarily disposed of the case and controversy issue by stating that "at least some of the appellants" had a sufficient stake to present a real controversy. 424 U.S. at 12.

concerning 28 certified questions of constitutional law. *Buckley*, 519 F.2d 901-904. These certified questions were abstract and hypothetical, such as the question on the constitutionality of spending limits:

> 3. Does any statutory limitation, or do the particular limitations in the challenged statutes, on the amounts that individuals or organizations may contribute or expend in connection with elections for federal office violate the rights of one or more of the plaintiffs under the First, Fifth, or Ninth Amendment or the Due Process Clause of the Fifth Amendment of the Constitution of the United States?

519 F.2d at 899.

The United States did not defend the constitutionality of the spending limits. The Brief for the Attorney General as Appellee and for the United States as Amicus Curiae, pp. 67-68, 72-73, indeed suggested that expenditure limitations might be unconstitutional.

Even in First Amendment cases, the Court accords deference to legislative findings as to harms to be avoided and the remedial measures to be adopted; otherwise, the legislative authority to make judgments to develop national policy would be greatly infringed. *Turner Broadcasting System, Inc., v. Federal Communications Commission*, 520 U.S. 180, 195 (1997) (upholding cable television "must-carry" requirements). Despite the lack of any trial of fact, the decision in *Buckley* gave no deference to legislative judgments as to the need for spending limitations. As Justice White noted in dissent, "The record

before us no more supports the conclusion that the communicative efforts of congressional and Presidential candidates will be crippled by the expenditure limitations than it supports the contrary." 424 U.S. at 263.

The results of two decades of application of *Buckley* lend credence to the legislative findings rejected therein and provide a basis for new legislative findings of compelling governmental interests necessitating campaign expenditure limitations.

## CONCLUSION

The *amici* States urge this Court to reevaluate campaign expenditure limits in light of the facts and compelling interests presented in this case which were not raised in *Buckley*. We submit that *Buckley* does not and should not stand as a bar to Cincinnati's campaign expenditure limits and request the Court to reverse the decision below which struck down the ordinance as unconstitutional.

Respectfully submitted,

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